

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF BLOOMINGTON

In the Matter of Days Inn West (7851
Normandale Boulevard) Nuisance
Service Call Fee issued April 4, 2016 for
Violation of State Pool Code, MN Rules
4717.1550, subp. 1.B.(1), adopted by
reference in City Code Section 14.443
and Nuisance Service Call Fee issued
March 17, 2016 for Violation of City Code
Section 21.301.06 Parking and Loading

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

The above-entitled matter came before Administrative Law Judge Jim Mortenson for a hearing on June 29, 2016, at the Bloomington Civic Plaza, pursuant to a Notice and Order for Hearing dated June 2, 2016. The record closed on July 22, 2016, upon the filing of closing arguments.

Ann Kaul, Assistant Bloomington City Attorney, appeared on behalf of the City of Bloomington (City). Chad McKenney, Donohue McKenney, Ltd., appeared on behalf of Maplewood Lodging, LLC (Respondent), owner of Days Inn West (Property).

STATEMENT OF THE ISSUES

1. Did the Respondent violate City Code Section 21.301.06 regarding parking when it permitted vehicles on its Property to be parked on grass or landscaped areas?
2. Did the Respondent violate City Code Section 14.443 when it failed to ensure the Property's indoor swimming pool was only accessible through a working self-latching door?
3. Did the City properly assess Respondent nuisance service call fees on March 17 and April 4, 2016?

SUMMARY OF CONCLUSIONS

The City has shown by a preponderance of the evidence that the Respondent violated City Code Sections 21.301.06 and 14.443. The City properly assessed Respondent nuisance service call fees on March 17 and April 4, 2016.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Property at issue, Days Inn West, is located at 7851 Normandale Boulevard, Bloomington, Minnesota 55438.¹

2. The Property is owned by Maplewood Lodging, LLC, 2401 Prior Avenue North, Roseville, Minnesota 55113.² Respondent has owned the Property since June 2014.³

3. On March 17, 2015, the City issued an abatement notice to Respondent due to the property being identified as a high crime property.⁴

4. On April 5, 2015, the City again identified the Property as a high crime property and on April 8, 2015, a resulting nuisance service call fee was issued.⁵

5. On April 29, 2015, the City ordered Respondent to repair or replace deteriorated stucco fascia that had separated from the building, and to repair the building's indoor swimming pool.⁶

6. On May 1, 2015, the City found Respondent in violation of Minn. Stat. § 299F.362, subd. 4 (2016), because 23 guest rooms on the Property lacked functioning smoke detectors.⁷

7. On May 8, 2015, the City determined the Property had 14 violations in five different rooms.⁸

8. On July 7, 2015, the Property was inspected. On July 10, August 12, September 9, and October 13, 2015, Respondent was ordered to fix multiple violations both inside and outside the building based on that inspection. The orders addressed over 40 separate violations, including violations specific to 75 guest rooms on the Property.⁹

9. On August 21, 2015, the City ordered Respondent to correct three food violations and one previously cited facilities violation.¹⁰

¹ City Exhibit (Ex.) A at 1.

² Testimony (Test.) of Percy Pooniwala.

³ Test. of P. Pooniwala.

⁴ City Ex. K.

⁵ *Id.*

⁶ Respondent Ex. A.

⁷ City Exs. E, K.

⁸ Respondent Ex. A.

⁹ *Id.*

¹⁰ *Id.*

10. On March 7, 2016, a City worker made a complaint alleging that vehicles were parked on unapproved areas of the Property and that repairs were needed for “areas damaged.”¹¹

11. On March 14, 2016, Mike Thissen, an Environmental Health Specialist with the City, conducted an inspection of the property based on the March 7 complaint.¹² During the inspection, Mr. Thissen found three vehicles parked on grass or landscaped areas at the Property.¹³

12. On March 15, 2016, the City issued Respondent a Notice of Violation of City Code Section 21.301.06 regarding parking.¹⁴

13. On March 17, 2016, the City assessed the Respondent a nuisance service call fee in the amount of \$250 based on violation of City Code Section 21.301.06 - parking and loading, and at least two prior violations: the April 30, 2015, violation for failing to have functional smoke detectors in 23 guest rooms; and the April 5, 2015, violation of being a public nuisance due to high crime.¹⁵

14. The Property staff quickly corrected the parking violation.¹⁶

15. On March 28, 2016, in response to a March 25, 2016, near-drowning incident, Loreena Hilton, City Environmental Health Specialist, inspected the Property’s indoor pool.¹⁷ During the inspection, Ms. Hilton found that the pool did not have controlled door access because a screw had been inserted into the latching mechanism.¹⁸

16. Ms. Hilton issued a Swimming Pool Inspection Report to the Property on March 28, 2016, which included, among other things, a finding that the “main door to [the] pool area does not latch upon closing.”¹⁹

17. Respondent repaired the pool door by March 29, 2016.²⁰

18. On April 4, 2016, the City assessed the Respondent a nuisance service call fee in the amount of \$250 for violation of City Code Section 14.443, which incorporates State Swimming Pool regulations, and four other prior violations: the March 15, 2016, parking violation; the April 30, 2015, smoke detector violation; the April 8, 2015, high

¹¹ City Ex. A at 1.

¹² Test. of Mike Thissen; City Ex. A at 1.

¹³ Test. of M. Thissen; City Ex. A at 1; City’s Ex. C at 2.

¹⁴ Test. of M. Thissen; City Ex. B at 1.

¹⁵ City Ex. E at 1.

¹⁶ Test. of Harry Kathcart; Test. of M. Thissen.

¹⁷ Test. of Loreena Hilton; City Ex. G at 1.

¹⁸ Test. of L. Hilton; City Ex. G at 1; City Ex. H.

¹⁹ City Ex. H at 1.

²⁰ City Ex. J.

crime property nuisance service call fee; and the abatement notice issued March 17, 2015, for being a high crime property.²¹

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and City Council have jurisdiction over this matter pursuant to Minn. Stat. § 14.50 (2016) and City Code Section 1.17.

2. Parking is not permitted on “grass or landscaped areas pursuant to § 19.52 of this code, in addition to the restrictions set out in Chapter 8 of the city code[.]”²²

3. The Respondent violated City Code Section 21.301.06 when it permitted vehicles to be parked on grass or landscaped area at the Property.

4. City Code Section 14.443 adopts, by reference, Minn. R. 4717.0150-.3975 (2015) regarding public pools. Access to a public pool within a building must be controlled by locating the pool in a separate room with self-latching doors that restrict access to the room.²³

5. The Respondent violated City Code Section 14.443, which adopts by reference Minn. R. 4717.1550, subp. 1(B)(1), when it failed to have a working self-latching door to access its pool.

6. When there have been two or more nuisance service calls to a property within a 365-day period, an abatement notice may be issued to the property owner.²⁴ Following the proper service of an abatement notice or nuisance service call fee, each successive nuisance service call within the same 365-day period shall result in an administrative citation to that party in the amount of \$250 or more based upon the actual cost of the law enforcement response, up to \$2,000 for each separate call.²⁵

7. The City properly assessed Respondent nuisance service call fees on March 17 and April 4, 2016.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

²¹ City Ex. K.

²² City Code Section 21.301.06.

²³ Minn. R. 4717.1550, subp. 1(B)(1).

²⁴ City Code Section 12.15(c).

²⁵ City Code Section 12.15(e).

ORDER

The Respondent's appeal of the nuisance service call fees of March 17 and April 4, 2016, is dismissed with prejudice.

Dated: August 5, 2016



JIM MORTENSON
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepare

NOTICE

Pursuant to City Code Section 1.17 (k), this decision is final without any further right of administrative appeal. An aggrieved party may obtain judicial review of the decision of the independent hearing officer by petitioning the Minnesota Court of Appeals for a writ of certiorari pursuant to Minn. Stat. § 606.01 (2016).

MEMORANDUM

A. Background

On March 17 and April 4, 2016, the City issued nuisance service call fees in the amount of \$250 each to the Respondent. The March 17 fee was based on violations of City Code Section 21.301.06 and at least two prior violations: the April 30, 2015, violation for failing to have functional smoke detectors in 23 guest rooms; and the April 5, 2015, violation of being a public nuisance as a high crime property. The April 4, 2016, fee was based on a violation of City Code Section 14.443 regarding swimming pool safety and the prior violations for which the March 17 fee was issued, including the March 17 parking violation.

The Respondent disputes the validity of the underlying City Code violations and argues that the City did not properly assess Respondent the nuisance service call fees. It argues that the nuisance service call fees are unjustified because the alleged City Code violations were not within its control, were immediately abated, and its conduct does not constitute a public nuisance under the City Code. Further, the Respondent argues that the property has been unfairly singled out from other Bloomington hotels with similar City Code violations.

B. Violation of City Code Section 21.301.06

On March 14, 2016, Mike Thissen, an Environmental Health Specialist with the City, conducted an inspection of the Property in response to a complaint filed by another City employee on March 7, 2016. Thissen found three vehicles parked on grass or landscaped areas at the Property. City Code Section 21.301.06 states that accessory off street parking is prohibited on grass or landscaped areas pursuant to section 19.52 of the City Code.

The respondent disputes the violation and contends that it does not have the ability to control all of its guests and that it has had no similar parking violations within the last 365 days. The Respondent also maintains that the vehicles were immediately removed after notice from the City and there was no unabated nuisance conduct.

Violation of City Code Section 21.301.06 only requires that a vehicle be parked in a prohibited area at the time of the alleged violation. The evidence shows that there were three vehicles at the Property parked on grass or landscaped areas on March 14, 2016. It does not matter who placed the vehicles there. Therefore, the City has shown by a preponderance of the evidence that the Respondent did violate City Code Section 21.301.06 when it permitted three vehicles to be parked in a prohibited area. Because this was a successive code violation, the subsequent abatement of the particular nuisance is not a factor under the City Code.

C. Violation of City Code Section 14.443

On March 28, 2016, Loreena Hilton, a City Environmental Health Specialist, inspected the Property's pool following a near-drowning incident. Ms. Hilton found that a screw was keeping the indoor pool door from latching when closed. Minn. R. 4717.1550, subp. 1(B)(1), adopted by reference in City Code Section 14.443, states that access to a public pool within a building or enclosure must be controlled by locating the pool in a separate room with self-latching doors that restricts access to the room.

The Respondent disputes the violation and contends that guests often cause damage to hotel property beyond its control. Secondly, Respondent argues that the Property's head of maintenance inspects the pool door every day and it had no knowledge that the door was not functioning properly. The Respondent also contends that the problem was immediately abated, and so, there was no violation rising to the level of nuisance as defined by the City Code.

The failure to have a properly functioning self-latching door that restricts access to an indoor swimming pool is a violation of Minn. R. 4717.1550, subp. 1(B)(1). The evidence shows that during Ms. Hilton's inspection, the pool did not have a properly working self-latching door. The rule provides no exception, such as third-party damage to the door. Therefore, The City has shown by a preponderance of the evidence that the Respondent violated City Code Section 14.443 when it failed to have a working self-latching door to access its swimming pool.

D. Nuisance Service Call Fees

The City assessed Respondent a nuisance service call fee on April 8, 2015, due to the property being identified as a high crime property. City Code Section 12.15(e) states that where an abatement notice or nuisance service call fee was properly served upon the private property owner and/or interested party, each successive nuisance service call within the same 365-day period shall result in an administrative citation in the amount of \$250 or more.

A nuisance service call is defined as a public officer response to a verified incident of any activity or condition occurring on private property that is likely to unreasonably interfere with the quiet enjoyment of neighboring properties or the safety, health, welfare or comfort of the residents therein or misuse of city resources.²⁶ The City Code provides a non-exhaustive list of nuisances at Section 12.01.01.

Respondent received multiple violation orders following the nuisance service call fee for the April 8, 2015, violation. At least two of these were cited by the City as a basis to issue the March 17, 2016 nuisance service call fee resulting following the violation of City Code Section 21.301.06. Then, on April 4, yet another nuisance service call stemming from a swimming pool violation occurred, and another fee was issued. Both fees were for the minimum amount of \$250, not the actual cost of the calls.

The Respondent contends that the alleged City Code violations at issue do not fit within the list of 39 descriptions that are defined as constituting nuisance service calls by City Code Section 12.01.01. The list is not exhaustive. The Code loosely defines activities, conduct, and conditions that constitute nuisance service calls and specifically states that the list provided includes, but is not limited to, the 39 descriptions.

Second, the Respondent argues that the nuisance service call fee is intended as a cost recovery mechanism for unabated nuisance conduct and that in all cases it has immediately responded to the City's notices and abated all nuisances, not permitting them to continue. Respondent's argument is unpersuasive because nothing in the City Code suggests that a nuisance service call fee must be based on a single kind of nuisance. It is not unreasonable for the City to implement its nuisance service call fee for a property that has been involved in multiple, but different kinds, of nuisance service calls.

Finally, Respondent disputes the validity of the nuisance service call fees arguing that the property has been unfairly singled out. It argues that numerous hotels in Bloomington have violated similar City Code Sections and have not received any nuisance service call fees. Respondent has not presented a persuasive argument on this point. The evidence shows Respondent's property has been issued more violation orders than the nuisance service call fees in March and April 2016 reflect. Thus, it is unclear how Respondent's property would appear when compared to the others in a property by property and violation by violation comparison. Notably, Respondent did not present such

²⁶ Bloomington City Code Section 12.01.01

a comparison, only generally asserting it was treated unfairly.²⁷ Even if Respondent could make such a showing, however, the Administrative Law Judge lacks the authority to conduct a review beyond the administrative claims made here.²⁸

E. Conclusion

The City has demonstrated, by a preponderance of the evidence, that the facts serving as the basis for the two nuisance service call fees occurred. Further, the city has shown that the nuisance service call fees were properly issued based on repeat violations over the course of a 365-day period. Thus, Respondent's appeal of the two nuisance service call fees are dismissed with prejudice.

J. R. M.

²⁷ See Respondent's Post-Hearing Brief dated July 22, 2016.

²⁸ See City Code Section 1.17(g).